

Appl. No. 10/749,997
Amdt. dated December 6, 2005
Reply to Office Action of August 11, 2005

REMARKS/ARGUMENTS

Claims 1-19 are pending in the instant application. Claims 1-6 have been canceled. Accordingly, claims 7-19 form the subject matter of this response. Reconsideration of the present application in view of the amendments and the following remarks is respectfully requested.

Amendments to the Claims

Applicants have amended claims 7, 17 and 19 to address the Examiners claim objections and § 112 rejection. The amendments to the claims are supported by the claims and other portions of the Specification as filed. Further, in an effort to advance prosecution of this application, claims 1-6 have been canceled. Applicants submit that no new matter has been added by way of these amendments.

Claim Objections

In the Office Action mailed July 21, 2005, the Examiner objects to claims 7 and 17, specifically, the Examiner state that in claim 7 the "primary fastener" in line 24 appears to be a typographical error for "secondary fastener" and claim 17 lacks a period at the end of the claim. These two typographical errors have been addressed by the current amendments. By virtue of the amendments made herein, Applicants believe the Examiner's objection has been addressed and Applicants respectfully request that the Examiner withdraw the objection to claims 7 and 17.

Rejections Under 35 U.S.C. § 112

In the Office Action mailed July 21, 2005, the Examiner rejects claim 19 under 35 U.S.C. § 112 as being indefinite. Specifically, the Examiner states that claim 19 recites the limitations "rear waist portion" in line 19 and "front waist portion" in line 26. The Examiner states that there is insufficient antecedent basis for these limitations. Applicants have amended the term "rear waist portion" to "rear waist region" and the term "front waist portion" to "front waist region". These amended limitations have antecedent basis, as can be found in line 2. By virtue of the amendments made herein, Applicants believe the Examiner's rejection has been addressed and Applicants respectfully request that the Examiner withdraw this rejection to claim 19.

Rejections Under 35 U.S.C. § 103(a)

The combination of the Surprise patent and the Nakahata patent fail to teach or suggest all of the claim limitations.

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In the Office Action mailed August 11, 2005, the Examiner rejects claims 7-19 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat No. 6,174,303 filed September 26, 1997 by Suprise et al. (herein "the Suprise patent") in view of U.S. Pat No. 5,873,868 filed June 5, 1998 by Nakahata (herein "the Nakahata patent"). This rejection is respectfully traversed.

The Suprise patent is directed to a disposable absorbent article defining an outer cover, an absorbent chassis and a dual fastening system. The dual fastening system includes a pair of primary fasteners located on the outer cover in one of the waist regions of the absorbent article and a pair of secondary fasteners located on the outer cover in the opposite waist region of the absorbent article. The primary fasteners are configured to engage an outer surface of the absorbent article to maintain the article about the waist of the wearer and the secondary fasteners are configured to engage a body facing surface of the absorbent chassis to support the absorbent chassis. The absorbent chassis is attached to the outer cover at the waist edges and remains at least partially unattached from the outer cover between the waist edges to allow the outer cover to have a blousy appearance. Thus, the disposable absorbent article has an aesthetically pleasing garment-like appearance and improved fit and containment during use. See Abstract.

The Nakahata patent is directed to an absorbent article adapted to be worn about the lower torso of a wearer. The article includes a liquid-impervious, flexible backsheet adapted to face outwardly relative to the body of a wearer, a liquid-pervious topsheet adapted to face the body of the wearer, and an absorbent core positioned between the backsheet and the topsheet. The topsheet is elastically extensible and includes a plurality of slits or cuts that extend through the topsheet material and that enlarge to define a plurality of openings in the topsheet when it is subjected to tensile forces as it is worn. The openings permit solid and semi-solid bodily exudates to pass through the topsheet to the absorbent core as the diaper is worn. Upon removal of the diaper from the body of the wearer the tensile forces within the topsheet are relaxed, thereby causing the openings in the topsheet to close and substantially conceal from view the bodily exudates that had passed through the topsheet. See Abstract.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

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Independent claims 7 and 19 are directed to a disposable absorbent article. In particular, independent claims 7 and 19 of the present invention include, *inter alia*, a dual fastening system, the dual fastening system comprising, a pair of primary ears joined to the rear waist region, each primary ear having a bodyfacing surface, a garment facing surface, a proximal edge, a distal edge, a first connecting edge and a second connecting edge, the first and second connecting edges connecting the proximal and distal edges, and a primary fastener, and a pair of secondary ears joined to the front waist region, each secondary ear having a bodyfacing surface, a garment facing surface, a proximal edge, a distal edge, a first connecting edge and a second connecting edge, the first and second connecting edges connecting the proximal and distal edges, and a secondary fastener.

A *prima facie* case of obviousness has not been made; the Suprise patent and the Nakahata patent do not teach or suggest all the claim limitations. The Suprise patent does not disclose a pair of primary ears joined to the rear waist region, each primary ear having a proximal edge, a distal edge and a primary fastener, and a pair of secondary ears joined to the front waist region, each secondary ear having a proximal edge, a distal edge and a secondary fastener. Applicants assert that the Nakahata patent fails to correct the deficiencies of the Suprise patent. That is, the Nakahata patent fails to teach or suggest a pair of primary ears joined to the rear waist region, each primary ear having a primary fastener, and a pair of secondary ears joined to the front waist region, each secondary ear having a secondary fastener.

The Examiner believes the Suprise patent "teaches a pair of primary ears joined to the rear waist region (Suprise, Fig. 2). For Claims 7 and 19, each primary ear has a bodyfacing surface, a garment facing surface, a proximal edge, a distal edge, a first connecting edge and a second connecting edge... (Suprise, Fig. 2)." The Examiner believes Suprise "teaches each primary ear having a primary fastener (reference numbers 62 and 64, Fig. 2 and col. 13, lines 6-10)." The Examiner believes the Suprise patent "shows a pair of secondary ears joined to the front waist region, each secondary ear having a bodyfacing surface, a garment facing surface, a proximal edge, a distal edge, a first connecting edge and a second connecting edge... (Fig. 2)." The Examiner believes the Suprise patent "teaches each secondary ear having a secondary fastener (Suprise, reference numbers 66 and 68, Figs. 2 and 3, col. 13, lines 42-47)."

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A closer examination of the Surprise patent shows that the absorbent article does not include primary or secondary ears joined to the rear or front waist region, contrary to the Examiners belief. As required by the claims, the ears have a proximal edge, a distal edge, a first connecting edge and a second connecting edge. The primary fasteners of the Surprise patent "are located on the outermost corners of the outer cover 30 in the rear waist region 24 of the diaper 20." (Col. 13, lines 6-10), and therefore do not have a proximal edge and thus are not ears as required by claims 7 and 19. Furthermore, the secondary fasteners "are located on the side edges 32 and 34 of the outer cover 30 in the front waist region 22 of the diaper 20." (Col. 13, lines 49-51), and therefore do not have a proximal edge and thus are not ears as required by claims 7 and 19.

Applicants assert that the Nakahata patent fails to correct the deficiencies of the Surprise patent. That is, the Nakahata patent fails to teach or suggest a pair of secondary ears joined to the front waist region, each secondary ear having a secondary fastener. The Nakahata patent discloses a diaper including a single fastening system 36. The fastening system 36 preferably comprised securement members 37 that engage a landing member 38. (Col. 8, lines 21 – 29). As can be seen in Figs. 1, 2 and 4, the securement members 37 are only located in one waist region. The combination of the Surprise patent with the Nakahata patent would not result in a disposable article with a pair of primary ears joined to the rear waist region, each primary ear having a primary fastener, and a pair of secondary ears joined to the front waist region, each secondary ear having a secondary fastener. Thus, the combination of references cited by the Examiner cannot be said to render the claimed invention obvious.

For at least this reason, Applicants respectfully submit that claims 7 and 19 are patentable over the Surprise patent in light of the Nakahata patent and that the rejection should be withdrawn. Likewise, Applicants respectfully submit that claims 8-18, which depend from independent claim 7, are patentable over the Surprise patent in light of the Nakahata patent for at least the reasons stated above.

Prior Art Made of Record and Not Relied Upon

Applicants have reviewed the references cited by the Examiner but not relied upon in rejecting the claims. However, Applicants assert the cited references fail to teach or suggest the invention recited in the claims. Accordingly, claims 7-19 are patentable over such references.

In conclusion, and in view of the above amendments and remarks, reexamination, reconsideration and withdrawal of the rejections of claims 7 – 19 under 35 U.S.C. §§ 112 and 103 are respectfully


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requested. Moreover, it is respectfully submitted that all of the presently presented claims are in condition for allowance and such action is earnestly solicited. If the Examiner has any questions or if there are any remaining issues that can be handled by telephone, the Examiner is invited to contact the undersigned at (920) 721-4558.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-4558.

Respectfully submitted,
JANET E. COLLINS ET AL.

By: 

David J. Klann
Registration No.: 46,833
Attorney for Applicant(s)

CERTIFICATE OF TRANSMISSION

I, Barbara D. Miller, hereby certify that on December 6, 2005, this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

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